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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
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Note by the Secretariat

Comments by States parties on Concluding observations

1. The Committee on Economic, Social and Cultural Rights, at its 29th session held from 11 to 29 November 2002, decided that following the adoption by the Committee of concluding observations, if the relevant State party submits to the Committee its comments on the concluding observations, these comments will be published, as submitted, as a Committee document and referenced in the Committee's annual report. Such comments by a State party will be published for information purposes only.

2. Accordingly, this document contains Comments submitted on 16 July 2002 by the Government of Japan on the Concluding observations (E/C.12/1/Add.67) adopted by the Committee at its twenty-sixth session (13-31 August 2001) following its consideration of the second periodic report of Japan (E/1990/6/Add.21 and Corr.1).

GE.03-40005

1. The Government of Japan is of the view that the Concluding Observations of the Committee on Economic, Social and Cultural Rights adopted on 31 August last year is based on some apparent misunderstanding of the facts and that it requires our further explanation. Therefore, the Government of Japan conveys to the Committee the following comments.

2. First, the Government identifies in the Concluding Observations the following points which show that the Committee misunderstands or misrepresents facts.

(1) In paragraphs 11, 21 and 34, the Committee points out that Japan has made a reservation to Article 8 (2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Nevertheless, it is Article 8(1)(d) that Japan makes a reservation to. Moreover, there is no grounds for the Committee's claim in paragraph 21 that Japan violates Article 8(2) of ICESCR by limiting the right to strike, because Japan reserves the right not to be bound by the provision of Article 8(1)(d).

(2) Concerning paragraph 21, the ILO Convention No.87 is not understood to deal with issues related to the right to strike, judging from its wording, discussion at the negotiation, and interpretation. Therefore, it is not correct to claim that the prohibition of strikes for all public employees in Japan contravenes the ILO Convention No.87.

(3) Concerning paragraphs 21 and 48, the Committee of Experts on the Application of Conventions and Recommendations of ILO expresses its view that the restriction on the right to strike should be confined to "public servants exercising authority in the name of the State" or "essential services the interruption of which would endanger the life, personal safety or health of the whole or part of the population."Therefore, in the light of the above-mentioned ILO views, it is inappropriate that the Committee states the right to strike in public employees not working in essential services should not be subject to restriction.

(4) Concerning paragraphs 26 and 53, as the Government has repeatedly explained to the Committee in the Consideration of the report, the Asian Women's Fund (AWF) has been offering the atonement, which expresses sincere feeling of the Japanese people and the Government, to 285 former "wartime comfort women" acknowledged by the governments of the Philippines and South Korea, the authority of Taiwan, or related organizations which are entrusted by these governments and the authority. In addition, the AWF has been implementing projects related to the former "wartime comfort women" in Indonesia and Netherlands. These projects have been accepted appreciation of the former "wartime comfort women". Therefore, the Committee's claim that "the compensation ..... has not been deemed an acceptable measure by the women concerned" is not correct. Furthermore, the Committee's claim that AWF is "primarily financed through private funding" is not appropriate, because the Government of Japan has been bearing all costs for the AWF's operation and management, other than atonement which is original from the fund raised by the Japanese nationals. With regard to the issues of reparation, property and claims relating to the last war including the issue known as "wartime comfort women", the Government of Japan has sincerely fulfilled its obligations in accordance with the San Francisco Peace Treaty, bilateral peace treaties, and other relevant treaties and agreements. On the other hand, the Government recognizes that the issue known as "wartime comfort women" was a grave affront to the honour and dignity of a large number of women. Based on this recognition, the

Government will continue its effort to render maximum support to the AWF through which the Government of Japan, together with the people of Japan, expresses its sincere sentiment to the issue known as "wartime comfort women", so that it can fulfill its objectives.

3. Secondly, to our great disappointment, it seems that the Committee does not fully understand the following points about which the Government of Japan, exhausted explanation both in its reply to the List of Issues and at the time of the Consideration of the report. And as a result, we suspect that the recommendations in the Concluding Observations may be based on misunderstanding of the facts or causal relationship.Here the Government of Japan limits itself to the following two typical cases. Nevertheless, it considers taking up and referring to other similar cases in its next report.

(1) Concerning paragraph 59 in which the textbook authorization system is mentioned; the Government of Japan makes the following clear. Involvement of a central government in textbook varies from country to country. In case of Japan, the Government requires textbook writers and editors of private sector to make revisions only in case that their textbooks include flaws such as an obvious mistake or a lack of balance in accordance with the Regulations of Textbook Authorization and the general standards for curricula (the Course of Study), and each board of education chooses textbooks to be used at schools out of the textbooks which are approved by the Government. Based on the Course of Study, all the Japanese textbooks include reference to respect for fundamental human rights, pacifism, mutual respect for sovereignty and the significance of international cooperation. Moreover, the textbook authorization is conducted strictly and appropriately based on the Regulations of Textbook Authorization which requires consideration from a viewpoint of mutual understanding and cooperation among Asian neighbouring countries. Therefore, the textbook authorization system enables the contents of school textbooks to be compatible with Article 13 of ICESCR that requires respect for human rights, fundamental freedom, mutual understanding, tolerance and friendship among various groups. Furthermore, other teaching materials are used in schools only when they are beneficial to and suitable for school education and the schools decide to use them. This system works appropriately under the management, direction and advice of each board of education. In Japan, textbooks are made and authorized under the system mentioned above. As a result, the contents of textbooks and other teaching materials are kept impartial and balanced so that they are compatible with ICESCR.

(2) Concerning paragraphs 27 and 28: the Government requests the Committee to appreciate precisely that the Government, Hyogo Prefecture, Kobe City, and other agencies concerned have been providing prompt and appropriate assistance to the welfare of the victims of the Great Hanshin-Awaji Earthquake by implementing various measures which are unprecedented in other advanced nations in addition to providing medical care, shelter, food, water and other necessities. The measures include construction of "Community based emergency temporary houses for aged people and physically handicapped people," where tenants are provided with services by "life support members", which is the special staff for supporting welfare of victims and provision of collective housing which facilitates the formation of a community, where aged people can live together without feeling isolated. The victims have been provided with mental care services, such as measures to facilitate collective move to permanent houses so that communities are kept intact, and home visit by nurses and "life support members". Special support has been provided for the victims who lost their families, by establishing "Mental Health Care Centers,"

implementing training and dispatch of "Staff promoting mental care," and stationing at schools teachers who are in charge of the mental care for children. Moreover, concerning payment of housing loans of earthquake victims, the Government has been taking special measures to help those who try to rebuild their houses with their own funds, by subsidizing interests for loans, extending the repayment period, subsidizing the borrower of more than one loans (new application and existing loan on damaged house). Therefore, the Government is confident that it has been supporting earthquake victims' welfare appropriately by taking various measures mentioned above.

4. Thirdly, the Government explains some fundamental issues which are included in the Concluding Observation.

(1) Concerning paragraphs 10 and 33, the position of the Government about the direct applicability of the provision of the ICESCR continues to be the same as was explained in the Consideration of the report. The Government points out that each state party to treaties, including ICESCR, has the prime authority to interpret the treaties, though it refers to the Observations of the Committee as one useful information. In Japan, whether certain provisions of treaties can be directly applicable is judged in each case, taking into account the purposes, contents and wording of the provisions concerned.

(2) Concerning paragraphs 34 and 48, the Government is of the view that it should be subjected to independent judgement of each state party to decide to withdraw reservations or not, though it understands that the Committee's interest in this issue is legitimate to the extent that it lies within the scope of its mandate. The Government notes that its reservations are made in accordance with the proper procedures prescribed in the provision of Vienna Convention on the Law of Treaties.

5. Finally, it is doubtful whether the following issues should be taken up in the Concluding Observations of the Committee.

(1) Concerning paragraphs 21 and 48, the Government notes that the ILO Convention No.87 is not understood to deal with issues related to the right to strike, and that there are no ILO documents explicitly dealing with the right to strike. Furthermore, neither the Committee on the Application of Standards nor the Committee of Experts on the Application of Conventions and Recommendations has mentioned that the restriction on fundamental labour rights of public employees contravenes relevant ILO Conventions. Therefore, it is doubtful whether the Committee, which has no authority to interpret the ILO Conventions, has the mandate to state that "This contravenes ..... the ILO Convention (No.87) .....". In this connection, the Government refers to the statement of the Committee of Experts on the Application of Conventions and Recommendations of ILO that the restriction on the right to strike and collective bargaining of public employees is compatible with the ILO Convention No. 98 on condition that there are measures to compensate.

6. Other comments from the concerned ministries and agencies are attached*.

7. Having pointed out the above, the Government will refer to the Concluding Observations as a reference, and would like to continue its dialogue with the Committee to pursue more effective implementation of the obligations of the ICESCR.

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*/May be consulted in archives of the Secretariat of the Committee on Economic, Social and Cultural Rights

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